IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

****

:ORDER:

Rajendra Vs. State of Rajasthan & Ors.

****

S. B. CIVIL WRIT PETITION NO.3452/2000 UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OFINDIA.

****

Date of Judgment : 9th Feb., 2005

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.D.R.Bhandari, for the petitioner.
Mr.Vikas Balia for the respondent.
Mr. Rampal Choudhary, Addl. Advocate General for the State.

BY THE COURT:

. Heard learned counsel for the parties.

2. By this writ petition, the petitioner has challenged the order of the Civil Judge (Sr.Div.) Rajsamnd dated 5th Sept., 2000 by which the trial court held that the document in question Annex.3 and 4 require neither stamp duty or registration and, therefore, the documents are admissible in evidence.

3. According to learned counsel for the petitioner, the documents Annex.3 and 4 are supplementary to each other constituting one document and otherwise also it is clear from the Annex.3 and 4 that the original Khatedar tenant took the consideration of Rs.80,000/- from plaintiff for the transfer of surface right of his agricultural land and thereby transferred his all rights in the land in question in favour of the plaintiff.

4. Learned counsel for the petitioner referred sub-clause (b) and (c) of Section 17(1) of the Indian Registration Act and Section 35 of the Stamp Act. According to learned counsel for the petitioner by these documents,the transferor assigned his all (surface) rights in favour of the transferee after taking consideration of Rs.80,000/- and, therefore, the documents require stamp duty as required for a deed of conveyance and require registration. Section 49 of the Indian Registration Act prohibits admission of a document, which requires registration, which has not been registered in accordance with law. Section 35 is more rigid provision of law which says that the document, which requires stamp duty and over which stamp duty has not been paid shall not be admitted in evidence 'for any purpose',

5. Learned counsel for the petitioner relied upon the two judgments

of this court delivered in Nihal Singh Vs. Singh Ram & Ors reported in RLR 1989(1) 384 and Smt. Jamna Bai Vs. Tulsi Ram reported in AIR 1997 (Raj.) 85 wherein it has been held that in view of the word used in Section 35 (for any purpose), the documents, which are not on proper stamp cannot be admitted in evidence for any purpose including for collateral purpose.

6. Learned counsel for the respondent raised preliminary objections. According to learned counsel for the respondent, the petitioner was not originally impleaded as party in the suit by the plaintiff-respondent. He was impleaded party respondent under Order 1 Rule 10 CPC. Therefore, the petitioner has no right to raise objection about the admissibility of the document because of the reason that plaintiff filed the suit for mere injunction against the respondent State and Department of the State seeking only relief of injunction. The respondent State and its department have not raised any objection about the admissibility of the document, therefore, the petitioner cannot raise the objection as no relief has been claimed by the respondent-plaintiff against the petitioner-defendant in the suit. It is also submitted that the petitioner is facing a criminal case in relation to the same subject matter and that fact has not been disclosed by the petitioner in his writ petition. Therefore, the petitioner is guilty of suppression of material fact from

this court. Hence,the petitioner is not entitled to get any relief under extra ordinary jurisdiction under Articles 226/227 of the Constitution of India. Further, according to learned counsel for the respondent, in view of the full bench decision of this court delivered in the case of Harakchand vs. The State of Rajasthan reported in RLW 1970 320, the writ petition of the petitioner is not maintainable because of the reason that in case the court decides about admissibility of document then that is within the jurisdiction of the Civil Court and the full bench of this court held that where there is no jurisdictional error, the High Court cannot interfere in the order passed by a subordinate court even if there is error of law or error of fact in the order.

7. I considered the submissions of learned counsel for the parties.

8. After hearing the arguments of both the learned counsel and after perusing the documents Annex.3 and 4 and after considering sub-clause (b) and (c) of Section 17(1) and Section 49 of the Indian Registration Act, and Section 35, I am of the view that by these documents neither right, title or interest in the immovable property have been transferred nor by these documents right, title or interest in the property have been created in favour of plaintiff. It is not in dispute that the executant of the document claiming himself to be the

Khatedar tenant of the agricultural land or claiming that he is in possession of the land in dispute. (However, in Annex.3 it is mentioned that the land for which one Ashok Kumar plaintiff applied for grant of lease is coming in the illegal possession). In Annex.3, the executant merely stated that he acquired the ownership and Khatedari rights in the said land. He (alleged transferor) further admitted that he took the compensation for the land from the plaintiff Ashok Kumar. Thereafter, he admitted that he did not give any no objection certificate to anybody. The executant, thereafter, admitted that in case the mine is sanctioned, the executant shall not have any objection and he will not put any hindrance. He further admitted that in case any mining lease is granted in favour of Ashok Kumar neither he nor his successor will have any objection. In Annex.4 also, the executant stated that he has issued a no objection certificate in favour of Ashok Kumar. The mining lease may be obtained about this land and the executant has received Rs.80,000/- on 20th Sept., 1991 in cash and whenever there will be need, he will execute a registered deed.

9. From the facts as stated in the two deeds, it is clear that petitioner, who had Khatedari right in the land in dispute has not agreed to transfer in present or in future, his Khatedari rights in favour of the plaintiff Ashok Kumar nor he by these deeds agreed to create a

lease in present or in future in favour of Ashok Kumar. By these deeds, the executant has not even transferred the possession of the land in dispute to Ashok Kumar. The executant merely gave a no objection certificate to Ashok Kumar that in case, mines are sanctioned and in case mining lease is granted in favour of Ashok Kumar, the executant alleged transferor shall have no objection and he has received the compensation amounting to Rs.80,000/-. It is not the case of any of the parties that the executant alleged transferor could have granted any mining lease in favour of the plaintiff Ashok Kumar or is supposed to grant mining lease in favour of Ashok Kumar in pursuance of the deed Ex.3 and 4.

10. What one can transfer is what he possesses. The plaintiff is also not claiming that he acquired either Khatedari rights, which the executant was possessing through these deeds. It is also not the case of the plaintiff that he obtained the mining lease or any other lease from executant by these documents Annex.3 and 4. In fact, case of the plaintiff is that there was no need of obtaining no objection from the said Khatedar before getting mining lease for the land in dispute, but he obtained no objection from the Khatedar of the land. In view of the above, the document cannot be a deed of transfer or assignment as claimed by the petitioner.

11. The State Government placed on record the document, a circular issued by the Inspector General, Registration and Stamp, Rajasthan dated 1st Oct., 1999 wherein also it is mentioned that in case the private Khatedar-tenants gives any no objection letter or consent letter for the purpose of obtaining lease by any other person and if the possession is transferred then the document will fall in the category of conveyance and and document shall require to be executed on the stamp under Article 23 of the Stamps Act. As stated above, by these documents, the executant neither gave possession of the land in dispute nor agreed to give possession of the immovable property to the plaintiff Ashok Kumar.

12. In view of the above, the court below rightly rejected the objection of the petitioner.

13. Since this court reached to the conclusion that on merit, the petitioner cannot succeed, therefore, this court is not deciding the preliminary objections raised by the respondents.

14. In view of the above discussion, the writ petition of the petitioner is dismissed having no merit.

(PRAKASH TATIA), J.

c.p.goyal/-